

PURPOSE:	This standard practice (SP) defines the information that must be included in a negotiation memorandum for a subcontract.
POLICY:	Subcontracts and modifications shall clearly and fully document the selection of source, basis for award, reasonableness of price, justification of sole-source, and all other information relevant to the transaction.
DEFINITION: Negotiation Memorandum	A negotiation memorandum is documentation that provides a complete history of the subcontract for the purpose of providing a basis for informed decisions at each step of the procurement process, supporting actions taken, providing information for reviews and investigations, and furnishing essential facts in the event of litigation or Congressional inquiries. A negotiation memorandum is also called a Justification and Documentation (J&D) memo.
SCOPE:	<p>This SP applies to</p> <ul style="list-style-type: none"> • Transactions of \$500,000 or more and • Transactions less than \$500,000 when the transaction is so complex, such as when cost analysis is required or when terms and conditions are an issue, that it requires further documentation.
Exceptions	<p>The following transactions do not require a formal negotiation memorandum, although an explanation of the procurement action and price justification is still necessary:</p> <ul style="list-style-type: none"> • Subcontracts awarded on the basis of lowest price meeting specifications, if no negotiations and/or discussions are held; • Consultant or Personal Services Agreements (see SP 37.1, Consultant and Personal Services); • Orders with DOE management and operating contractors (see SP 8.4, Orders With DOE M&O Contractors), and Intra-University Transactions (see SP 44.1, Intra-University Transactions); • Orders to other government agencies (see SP 8.2, Government Sources — General);

SCOPE: *(cont)*

- Funding actions that were already discussed in a previous negotiation memorandum, provided that no changes to the terms and conditions have been negotiated in the interim;
- Options that were evaluated as part of an initial proposal and are exercised at the amounts specified therein or reasonably determinable from the terms of the original subcontract; or
- Administrative actions involving no funds (e.g., no-cost extensions).

PROCEDURES: Background

Discussion within the negotiation memorandum should clearly demonstrate that the procurement specialist is fully conversant with the specifics of the subcontract. Each salient aspect of the transaction should be fully discussed. A distinct reasoning process should be evident, and conclusions should not be offered without a factual basis. The methodology, rationale, and basis for any tradeoffs reached as a result of negotiations should be completely documented.

Content

In general, the negotiation memorandum should address the areas suggested below. Within each section, events should be chronologically addressed and, when appropriate, referenced documents should be identified by an attachment number.

1. Procurement Situation

Discuss the background of the subcontract. Include the following details:

- A brief description of the work to be performed, referencing the specification or statement of work, if applicable;
- The purchase request number and date received; and
- The requesting organization and estimated value of the subcontract.

PROCEDURES: *(cont)*

2. Solicitation

Discuss the following:

- Development of the source list, including consideration of socioeconomic concerns (see SP 19.2, SB and SDB Participation);
- Offerors solicited or sole-source justification;
- Development of the solicitation, the evaluation basis or factors, and the date issued;
- The established date for responses;
- Any amendments to the solicitation and the dates issued;
- The method used to notify the offerors of any amendments; and
- The revised due date, if any.

3. Proposal(s)

Identify all offerors who submitted a proposal, their socioeconomic business type, and any

- Late proposals;
- Alternate proposals;
- Qualifying restrictions;
- Other irregularities from the standard solicitation process; or
- Discussions that might be held with any/all offerors.

4. Proposal Evaluation/Negotiation Objective

For negotiations based upon cost/price analysis, include the following, at a minimum, in your discussion:

- The source of the cost or pricing data and documentation and the extent to which the cost or

PROCEDURES: *(cont)*

pricing data was relied upon to develop the prenegotiation objectives (see SP 15.5, Cost or Pricing Data);

- The factors by which proposals were evaluated and a source was selected (see SP 15.4, Source Selection);
- The subcontractor's proposed cost elements;
- The technical analysis and/or the audit position;
- The weighted guidelines analysis, if applicable (see SP 15.10, Profit/Fee Objective);
- The prenegotiation objectives; and
- Any exceptions taken to specifications, statement of work, or terms and conditions.

For competitive subcontracts, include a complete narrative addressing the source-selection process. The discussion should include, as appropriate, public notice or other advertisement, the preproposal conference, the evaluation process, the competitive range determination, and other pertinent information. If a separate memorandum dealing with these subjects was prepared as part of the selection process, reference that memorandum.

Use sections 1, 2, and 3, above, as the historical basis for the subcontract and provide a comparison of proposals received, including the following:

- Total proposed cost or price;
- Name and address of each offeror;
- Invoice terms;
- Transportation charges; and
- F.O.B. point.

PROCEDURES: (cont)

Technical Analysis — If required, indicate the date that copies of proposals were sent to the requester or evaluation team for review, the date the analysis was received, and the recommended action.

Caution: An evaluator's opinion that a proposed cost is reasonable does not sufficiently justify the proposed price.

Best and Final Offers (BAFOs) — If BAFOs were requested, discuss the reasons for requesting BAFOs, the date BAFOs were requested and the date they are due, the method of notification, the effect of BAFOs on the initial proposals, the evaluation of the BAFOs, and any other pertinent information.

5. Negotiation

This section of the narrative must address

- The names and titles of all participants in the negotiations;
- The date that negotiations were initiated and finalized;
- If applicable, the *Certificate of Current Cost or Pricing Data* and the date it was signed (see SP 15.5, Cost or Pricing Data);
- The determination of the reasonableness of the final cost or price (see SP 15.6, Cost or Price Analysis);
- The basis for award; and
- The determination that the award is in the best interest of the Laboratory.

Negotiated subcontracts involving cost analysis must have a tabular summary in cost breakdown format, either within the narrative or as an attachment, that includes

- The prenegotiation objectives and negotiated breakdown;

PROCEDURES: *(cont)*

- Footnotes for each cost element, independently analyzed; and
 - Reasons for deviating from the prenegotiation objectives, if any.
6. Award
Identify the basis for award that was specified in the solicitation, the offeror being considered for award, and why the offeror is being considered for award.
7. Other Matters
All other matters deemed relevant to the transaction should be thoroughly discussed. These matters may include
- Applicability of Cost Accounting Standards (see SP 30.1, Cost Accounting Standards);
 - Requirements for government property (see SP 45.1, Government Property);
 - Progress or milestone payments;
 - Waiver of the Buy American Act (see SP 25.1, Buy American Act);
 - F.O.B. point (if other than destination, the method of shipment and estimated cost as provided by the Traffic Office);
 - Organizational conflicts of interest issues, if applicable (see SP 9.3, Organizational Conflicts of Interest);
 - Payment terms (see SP 32.1, Payments);
 - Equal Employment Opportunity (EEO) preaward clearance (see SP 22.1, EEO Preaward Clearance);
 - DOE approval of Foreign, Ownership Control, or Influence (FOCI) (see SP 4.5, Foreign Ownership, Control, or Influence);

PROCEDURES: *(cont)*

- Small business subcontracting plan requirements and approval (see SP 19.4, Small Business and Small Business Subcontracting Plans); and
- Any other topics requiring resolution or explanation.

8. Conclusions and Recommendations

If award is within the procurement specialist's signature authority, add a signature line. If award exceeds the procurement specialist's signature authority, include a statement that recommends award and lists all other required reviews and approvals, as appropriate, and provide signature lines for the procurement supervisor and/or Procurement Manager (see SI 1.2, Delegation of Procurement Authority).

Modifications

A negotiation memorandum for a subcontract modification should address as many of the above elements as applicable.

RESPONSIBILITIES:
Procurement Specialist

The procurement specialist must prepare a well documented negotiation memorandum for all subcontract actions covered under Scope, above.

REFERENCE:

DEAR 970.7108